In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 517

GEORGE G. HUNTER, JR., PETITIONER

v.

FRANCIS S. TALBOT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner seeks money damages against a revenue officer of the Internal Revenue Service for harassment. In May 1962, petitioner and his wife owed an overdue balance of $1,911 plus interest on their 1960 federal income tax. Petitioner does not deny that he was delinquent in the payment of his taxes. Respondent informed petitioner by phone that unless he submitted financial statements within 10 days, payment could not be deferred any longer. Petitioner rebuked him and hung up. Four weeks later, however, petitioner filed the statements.

Thereafter, respondent's supervisor (who had previously ordered respondent to levy on petitioner's

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bank account) ordered him first to serve a notice of levy on petitioner. Three days later, respondent sent petitioner and his wife a notice pursuant to 26 U.S.C. § 6331, informing them that if they did not pay the balance of their taxes in ten days, the government would levy on their property and sources of income. The government had previously sent them a similar notice in December 1961.

After waiting fifteen days, respondent served a writ of levy on the Manhattan bank in which petitioner had his business checking accounts. After petitioner received the 10-day notice he withdrew nearly $1400 from this account, so that the levy netted only $29.71. Respondent made no further attempt to levy on the wife's bank accounts in Queens or on the wife's hospital salary. (A.A. 30a–33a.)[1]

The district court held that respondent was acting within the scope of his authority at the time he performed the act complained of (*i.e.*, the levy on petitioner's bank account) and dismissed the complaint on the ground of executive privilege (Pet. 9a, 16a, 20a–21a; G.A. 8a; A.A. 13a–23a). The court of appeals affirmed on the ground that the complaint clearly alleged no harassment sufficient to state a cause of action (Pet. 8a–11a).

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[1] The record in this Court consists of the original record, the appellant's appendix in the court below (designated "A.A.") and the government's appendix in the court below (designated "G.A.").

Petitioner relies on § 7214 of the Internal Revenue Code of 1954 which makes "extortion or willful oppression under color of law" by any revenue agent a crime and gives the party injured a civil cause of action. Under the facts as alleged in the complaint and the affidavits, it is quite clear that respondent was not guilty of "willful oppression" within the meaning of this statute. He merely attempted to collect overdue taxes which the petitioner admittedly owed; upon orders of his supervisor, respondent served two notices on petitioner (when § 6331 of the Code requires only one) and finally levied on a $29 bank account. He did not follow up this initial levy with further proceedings against petitioner's and his wife's other accounts and the wife's salary. (A.A. 31a.) Eventually petitioner paid the remaining tax due (A.A. 32a).[2]

Respondent is thus not liable under § 7214. And since he was acting within the scope of his authority (26 U.S.C. 6331, 7701(a)(12); A.A. 28a–29a, 30a–33a, 41a; G.A. 3a, 6a–7a), he enjoys an absolute privilege against tort liability outside of § 7214. *Barr* v. *Matteo,* 360 U.S. 564; *Wheeldin* v. *Wheeler,* 373 U.S. 647.

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[2] The nature of petitioner's case is perhaps best demonstrated by his argument that the second 10-day notice—by giving petitioner time to withdraw all but $29 from his bank account—proves that respondent was not really trying to collect taxes but merely wanted to harass (Pet. 18).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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